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JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 777

IN THE MATTER OF CONSTRUCTORS OF FLORIDA, INC., Debtor in Reorganization

THE CORAL GABLES FIRST NATIONAL BANK and PAN AMERICAN BANK OF MIAMI,
Petitioners,

vs.

AMERICAN SURETY COMPANY OF NEW YORK, and JOHN NICHOLAS, as Trustee,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

APPENDIX TO BRIEF OF JOHN NICHOLAS, AS TRUSTEE OF CONSTRUCTORS OF FLORIDA, INC., RESPONDENT, IN OPPOSITION.

JOHN H. GUNN
Attorney for
JOHN NICHOLAS,
as Trustee Respondent
1534 Alfred I. duPont Building
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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
In proceedings for the reorganization of a corporation

NO.: 3736-M

In the Matter of:

CONSTRUCTORS OF FLORIDA,
a Florida corporation,

Debtor.

ORDER

THIS CAUSE came on to be heard before me upon the mandate issued by the United States Court of Appeals for the Fifth Circuit in these proceedings on September 13, 1965, on the appeals filed from this Court's "Order on Trustee's Objections to Claim of Coral Gables First National Bank and on Bank's Motion for Order to Pay Funds", entered herein on December 18, 1963, and this Court having considered the opinion of said United States Court of Appeals for the Fifth Circuit in the above and foregoing cause on June 30, 1965, and having considered said mandate, it is

ORDERED, ADJUDGED and DECREED as follows:

1. That this Court's "Order on Trustee's Objections to Claim of Coral Gables First National Bank and on Bank's

Motion for Order to Pay Funds" of December 18, 1963, is modified in the following respects:

a. That the portion of said Order awarding to the Coral Gables First National Bank a secured claim in the amount of $121,234.74 against the fund representing the proceeds of sale of the personalty described in chattel mortgages executed by the Debtor herein in favor of said Coral Gables First National Bank, is vacated, set aside and quashed.

b. That the portion of said "Order on Trustee's Objections to Claim of Coral Gables First National Bank and on Bank's Motion for Order to Pay Funds" overruling the objection of the Trustee to the claim of the Coral Gables First National Bank as a secured claim against the proceeds of sale of said personalty is vacated, set aside and quashed, and the objections of the Trustee to the claim of the Coral Gables First National Bank be and they are hereby sustained.

c. The Court of Appeals for the Fifth Circuit having determined that the said Coral Gables First National Bank has no valid lien, that portion of the said Order referring the matter of the relative priorities of the alleged lien of the Coral Gables First National Bank and that of the American Surety Company of New York to J. B. Booher, Referee in Bankruptcy, as Special Master be, and the same is hereby revoked, vacated and set aside.

d. The Coral Gables First National Bank be and it is hereby awarded an unsecured claim in the amount of $121,234.74, to participate ratably with the unsecured creditors in such proceeds as may be available for unsecured claims, except, however, said Coral Gables First National Bank shall not share in any sums collected by the estate as usury penalties from the Coral Gables First National Bank and/or the Pan American Bank of Miami.

2. Otherwise, said "Order on Trustee's Objections to Claim of Coral Gables First National Bank and on Bank's Motion for Order to Pay Funds" is hereby re-affirmed and re-adopted, and remains in full force and effect, provided that said Order and this Order shall be without prejudice to the Trustee's counterclaims asserted against the said American Surety Company of New York in the State Court proceedings and without prejudice to the Trustee's objections to the claim of the American Surety Company of New York filed in these proceedings.

3. Costs of these proceedings are hereby taxed against said Coral Gables First National Bank in accordance with said mandate, to be set upon motion.

DONE and ORDERED, at Miami, Dade County, Florida, this 21 day of September, 1965.

s/ EMETT C. CHOATE
UNITED STATES DISTRICT JUDGE